

DEPARTMENT OF CORPORATIONSwww.corp.ca.gov**DEMETRIOS A. BOUTRIS****California Corporations Commissioner
Sacramento, California**IN REPLY REFER TO:
FILE NO: OP 6899 CRMLA**COMMISSIONER'S OPINION 02/2 CRMLA**

THIS INTERPRETIVE OPINION IS ISSUED BY THE COMMISSIONER OF CORPORATIONS PURSUANT TO FINANCIAL CODE SECTION 50312 OF THE CALIFORNIA RESIDENTIAL MORTGAGE LENDING ACT. IT IS APPLICABLE ONLY TO THE TRANSACTION IDENTIFIED IN THIS OPINION REQUEST, AND MAY NOT BE RELIED UPON IN CONNECTION WITH ANY OTHER TRANSACTION.

November 14, 2002

Ms. Shirley P. Koehler
Assistant to the Chairman
Guaranty Bank And Trust Company
P.O. Box 5847
Denver, Colorado 80217-9522

Re: Guaranty Bank and Trust Company

Dear Ms. Koehler:

The Department of Corporations ("Department") has reviewed and considered your request of September 27, 2002, for an interpretive opinion on the issue of whether Guaranty Bank and Trust Company ("Guaranty"), a state-chartered bank in Colorado, is exempt from the licensing requirements of the California Residential Mortgage Lending Act ("CRMLA").

You have represented that Guaranty wishes "to provide first mortgage financing for residential purchases and refinances of primary and second homes in California."

Financial Code Section 50002(a) provides:

No person shall engage in the business of making residential mortgage loans or servicing residential mortgage loans, in this state, without first obtaining a license from the commissioner in accordance with the

- ♦ Securities ♦ Franchises ♦ Off-Exchange Commodities ♦ Investment and Financial Services ♦
- ♦ Independent Escrows ♦ Consumer and Commercial Finance Lending ♦ Residential Mortgage Lending ♦

requirements of Chapter 2 (commencing with Section 50120) or Chapter 3 (commencing with Section 50130), and any rules promulgated by the commissioner under this law, unless a person or transaction is excepted from a definition or exempt from licensure by a provision of this law or a rule of the commissioner.

Financial Code Section 50003(o) defines "residential mortgage loan" as "a federally regulated mortgage loan as defined in Section 3500.2 of Title 24 of the Code of Federal Regulations, or a loan made to finance construction of a one to four family dwelling." Thus, entities that provide residential mortgage loans, as defined here, and otherwise meet the criteria of a mortgage lender or servicer under the CRMLA, are generally required to obtain a license to engage in this activity. There are, however, specified exemptions to this requirement.

Financial Code Section 50003(g)(1) provides that an exempt person under this law includes:

Any bank, trust company, insurance company, or industrial loan company doing business under the authority of or in accordance with a license, certificate, or charter issued by the United States or any state, district, territory, or commonwealth of the United States that is authorized to transact business in this state.

In our opinion, Guaranty, as a Colorado state-chartered bank, meets the definition of an "exempt person" under Financial Code Section 50003(g)(1), provided that in the conduct of its business activities "in this state" Guaranty is "authorized to transact business." In the context of this exemption, it is our opinion that "authorized" means that Guaranty must meet all applicable legal requirements imposed by the State of California on a non-domestic entity seeking to engage in business in this state in order to claim the exemption. In this regard, you may wish to review California Corporations Code Section 171 and Financial Code Section 3800 et seq., as well as other provisions of California law, including pertinent sections of the Corporations Code and Financial Code.

Dated: November 14, 2002
Sacramento, California

DEMETRIOS A. BOUTRIS
California Corporations Commissioner

By _____
TIMOTHY L. Le BAS
Deputy Commissioner and General Counsel
Office of Law and Legislation
(916) 322-3553



GUARANTY BANK
AND TRUST COMPANY

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6899

September 27, 2002

Department of Corporations
Office of Law and Legislation
1515 K. Street, Suite 200
Sacramento, CA 95814-4052

Dear Sir or Madam,

Per my phone conversation to your office today I was instructed to request, in writing an *Interpretive Opinion* from your office in regards to the California Residential Mortgage Lending Act.

Guaranty Bank and Trust Company is a state chartered bank in Colorado. We are desiring to provide first mortgage financing for residential purchases and refinances of primary and second homes in California. The CRMLA states:

The CRMLA requires that any person engaged in business of making or servicing residential mortgage loans within California do so only under the authority of a license under the CRMLA. The following entities are exempt for the licensing requirements:

-Banks, trust companies, insurance companies, and industrial loan companies.

We interpret this to mean that Guaranty Bank is exempt from licensing requirements please provide your interpretation. Your prompt response will be greatly appreciated.

Sincerely,

Shirley P. Koehler
Assistant to the Chairman

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